

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION**

Thomas E. Dunbar et al.,  
Appellant,

v.

Douglas County Board of Equalization,  
Appellee.

Case No: 17R 0592

Decision and Order Affirming the  
Determination of the Douglas  
County Board of Equalization

Background

1. The Subject Property is a residential parcel improved with a 1,142 square foot ranch style residence, with a legal description of: Happy Hollow Hills Lot 4 Block 5 105 x 138, Omaha, Douglas County, Nebraska.
2. The Douglas County Assessor (the County Assessor) assessed the Subject Property at \$223,700 for tax year 2017.
3. Thomas E. Dunbar (the Taxpayer) protested this value to the Douglas County Board of Equalization (the County Board) and requested an assessed value of \$181,600 for tax year 2017.
4. The County Board determined that the taxable value of the Subject Property was \$223,700 for tax year 2017.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on July 25, 2019, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Steven Keetle.
7. Thomas E. Dunbar was present at the hearing.
8. Larry Thomsen, Senior Appraiser: Residential, of the Douglas County Assessor/Register of Deeds Office (the County Appraiser) was present for the County Board.

Applicable Law

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission’s review of the determination of the County Board of Equalization is de novo.<sup>2</sup>

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<sup>1</sup> See, Neb. Rev. Stat. § 77-1301(1) (Reissue 2018).

<sup>2</sup> See, Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). “When an appeal is conducted as a ‘trial de novo,’ as opposed to a ‘trial de novo on the record,’ it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal.” *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

11. When considering an appeal a presumption exists that the “board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action.”<sup>3</sup> That presumption “remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.”<sup>4</sup>
12. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>
14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission’s Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

#### Findings of Fact & Conclusions of Law

16. The Taxpayer alleged that the change in value of the Subject Property from the prior year’s assessment was not equalized with the change in value of the other properties in the area.
17. The Taxpayer stated that the assessed value of the Subject Property increased in value while the value of six other nearby properties decreased.
18. The assessed value for real property may be different from year to year, dependent upon the circumstances.<sup>9</sup> For this reason, a prior year’s assessment is not relevant to the subsequent year’s valuation.<sup>10</sup>
19. The Taxpayer alleged that the Subject Property was not assessed uniformly or proportionally with other comparable properties.
20. “To set the valuation of similarly situated property, i.e. comparables, at materially different levels, i.e., value per square foot, is by definition, unreasonable and arbitrary,

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<sup>3</sup> *Brenner* at 283, 811.

<sup>4</sup> *Id.*

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

<sup>7</sup> Cf. *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> See, *Affiliated Foods Coop. v. Madison Co. Bd. Of Equal.*, 229 Neb. 605, 613, 428 N.W.2d 201, 206 (1988).

<sup>10</sup> See, *DeVore v. Bd. Of Equal.*, 144 Neb. 351, 13 N.W.2d 451 (1944), *Affiliated Foods*, 229 Neb. at 613, 428 N.W.2d at 206 (1988).

under the Nebraska Constitution.”<sup>11</sup>

21. The Taxpayer presented and discussed charts with information about the change in total assessed value of the Subject Property and other properties located near the Subject Property for the tax year at issue as well as other tax years.
22. The present appeal was of the County Board’s determination of the 2017 assessed value and the Commission’s authority in this appeal is limited to the valuation for that tax year.<sup>12</sup>
23. Comparable properties share similar use (residential, commercial/industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>13</sup>
24. “A sales comparison adjustment is made to account (in dollars or a percentage) for a specific difference between the subject property and a comparable property. As the comparable is made more like the subject, its price is brought closer to the subject’s unknown value.”<sup>14</sup>
25. The Taxpayer did not provide the Property Record File (PRF) for the properties on the charts but rather provided information from the County Assessor’s web site regarding the 2019 assessments of four other properties.<sup>15</sup> Without the details contained in the PRF, the Commission is unable to determine the contributions to value of the various amenities or features of the properties such as size, quality, condition, improved basement square footage, garages, decks, etc., to determine if they are comparable to the Subject Property or whether adjustments could make them comparable to the Subject Property.<sup>16</sup>
26. The information from the County Assessor’s web site shows that the other properties are of different quality and condition ratings than the Subject Property and have different amenities, which would impact their per square foot assessed values.
27. The County Board presented the PRF for the Subject Property as well as information regarding the qualified sales that occurred in the economic area of the Subject Property used in determining the value attributed to each of the characteristics of residential properties in the area, including the Subject Property, to support the differences in per square foot assessed values between the Subject Property and the other properties presented.

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<sup>11</sup> *Scribante v. Douglas County Board of Equalization*, 8 Neb.App. 25, 39, 588 N.W.2d 190, 199 (1999).

<sup>12</sup> *See, e.g., Falotico v. Grant County Board of Equalization*, 262 Neb. 292, 631 N.W.2d 492 (2001)

<sup>13</sup> See generally, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

<sup>14</sup> Appraisal Institute, *Appraising Residential Properties*, at 334 (4<sup>th</sup> ed. 2007).

<sup>15</sup> The Commission notes that the quality rating of the Subject Property was different on the 2017 PRF versus the 2019 County Assessor information. The Commission is unable to determine if there were any changes to characteristics of any of the other properties from the 2017 assessment to the 2019 assessment based on the information presented.

<sup>16</sup> For this reason, the Order for Single Commissioner Hearing and Notice issued to the Taxpayer on May 30, 2019, includes the following:

**NOTE:** Copies of the County’s Property Record File for any property you will present as a comparable parcel should be provided so that your claim can be properly analyzed. The information provided on the County’s web page is **not** a property record file. A Property Record File is only maintained in the office of the County Assessor and should be obtained from that office prior to the hearing.

28. The Taxpayer has not demonstrated that the valuations of similarly situated properties were set at materially different levels entitling the Subject Property to a reduction in assessed value under the determination of the Court of Appeals in *Scribante*.
29. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
30. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

ORDER

IT IS ORDERED THAT:

1. The Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2017 is affirmed.
2. The taxable value of the Subject Property for tax year 2017 is:

Land	\$ 68,880
<u>Improvements</u>	<u>\$154,900</u>
Total	\$223,700

3. This Decision and Order, if no further action is taken, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2017.
7. This Decision and Order is effective on June 26, 2020.

Signed and Sealed: June 26, 2020

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Steven A. Keetle, Commissioner